

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

DANIEL MILLER, #15A3706,

Plaintiff,

v.

ANTHONY ANNUNZI, Acting Commissioner,
NYS DOCCS, JASON EFFMAN, Assistant
Commissioner, PREA Compliance,
NYS DOCCS, SUPERINTENDENT
GRIFFIN, Greenhaven Correctional
Facility, FIRST DEPUTY SUPERINTEN-
DENT COLLADO, HEARING OFFICER
JOHN DOE, SERGEANTS JOHN DOE
#1-3, C.O. JOHN DOE #1-5,
C.O. JANE DOE, and DR BENTAVEGNA,
FSHD,

RECEIVED
SONY DOCKET UNIT

2017 JUN 21 PM 2:54

17CV4698

CUMPLAINT IN A
CIVIL ACTION BY
PRISONER UNDER
42 U.S.C. § 1983 et seq.

Jury Trial Demanded

Defendants.

I.

INTRODUCTION:

This is a pro se civil rights action filed by a plaintiff at Greenhaven Correctional Facility under Section 1983, The ADA/RA and PREA. Plaintiff is seeking redress of First, Eighth, and Fourteenth Amendment violations, ADA/RA violations, and PREA Reporting violations by defendants, in conjunction with a prison Misbehavior Report, pre-hearing confinement, disciplinary proceedings, and excessive force. Plaintiff is suing for violation of both the U.S. and NYS Constitutions.

Plaintiff is seeking a money judgment, declaratory and injunctive relief, including a Temporary Restraining Order. Defendants are state actors sued in their individual, and, where applicable, official capacity.

II JURISDICTION AND VENUE:

1. The United States district courts have original jurisdiction under 28 U.S.C. § 1333 & "federal question" jurisdiction under 28 U.S.C. § 1331 to hear cases involving Civil rights actions under § 1983, the ADA/RA, and P.R.E.A.

2. The United States district courts have supplemental jurisdiction to hear cases which involve violations of the State Constitution in conjunction with the Federal Constitution under 28 U.S.C. § 1337.

3. This case is properly venued in the Southern District of New York, as all acts which form the bases for causes of action occurred in Dutchess County.

III. PARTIES:

PLAINTIFF(S):

4. Plaintiff, at all times alleged, was and is an inmate confined in the Green Haven Correctional Facility, Dutchess County, State of New York, a convicted sex offender, a "disabled person" and "qualified individual" confined in a wheelchair, and member of the L.G.B.T. community, with a reputation for grievance writing in NYSDOCCS facilities.

5. Anthony Annucci ("ANNUCCI"), was and is the Acting Commissioner of the NYSDOCCS, responsible for promulgating all rules, regulations, ordinances and directives governing the conduct of both staff and inmates in NYSDOCCS facilities. He is sued in both his official and individual capacity.

6. Jason Effman ("EFFMAN") was and is the Assistant Commissioner for P.R.E.A. Compliance in the NYSDOCCS facilities. He is sued in his official and individual capacity.

7. Superintendent Griffin ("GRIFFIN"), was and is the Superintendent at the Greenhaven Correctional Facility ("GCF"). He is responsible for disciplinary hearings with respect to Tier III Misbehavior Reports. He is sued in his official and individual capacity.

8. First Deputy Superintendent Collado ("COLLADO"), is the second in command to GRIFFIN. He is responsible to follow up and investigate all claims of abuse and mistreatment as delegated by GRIFFIN. He is sued in his individual capacity.

9. Hearing Officer John Doe ("DHO") is the disciplinary Tier III hearing officer designated by GRIFFIN to conduct a hearing in conjunction with a Misbehavior Report dated May 12, 2017. He is sued in his official and individual capacity.

10. Sergeants John Doe # 1-3 (~~DoE~~) are fictitious names which signify the Area Supervisors for the GCF infirmary, on the 6am to 2pm tour, between May 18, 2017 and June 18, 2017, whose names could not be determined through due diligence. They are sued in their individual capacities.

ii. Correction Officers John Doe # 1-5 are fictitious names representing the Unit Officers at the GCF infirmary on the 7am to 3pm tour of duty from May 18, 2017 to June 19, 2017, whose names could not be determined through due diligence.

12. Correction Officer Jane Doe is a fictitious name representing a Female Unit Officer at the GCF infirmary on the 7am to 3pm tour from May 18, 2017 to June 19, 2017, whose name could not be determined through due diligence.

13. Dr. Bentavegna "BENTAVEGNA" is the Facility Health Services Director. He is responsible to insure that GCF inmates receive proper medical attention.

IV. FACTS:

14. On May 12, 2017, I was physically and sexually assaulted and harassed by 3 Sergeants, the Nurse Administrator, a Nurse, and an Investigator at the Franklin Correctional Facility, all due to my sexual orientation, retaliation for filing grievances, and because of my crime of conviction for a sexual offense.

15. I was moved to Upstate Correctional Facility and received a Misbehavior Report, dated May 12, 2017, on May 15, 2017.

16. On May 18, 2017, I was moved to the Greenhaven Correctional Facility and have been here ever since.

17. I was placed in a hospital isolation room upon admission at 6:00 pm that night, however, I was suffering from heat exhaustion after an 8 hour ride in a Van with no air conditioning and no windows, so I was not very coherent.

18. Ever since then, I have remained in a locked isolation room with no recreation, no clean clothing, no hygiene supplies, no wheelchair - until June 8, 2017, - no contact with my 85 year old mother, no telephone calls, no postage, and no hearing being completed.

19. I was forced to crawl on the floor like an animal to use the bathroom and to eat meals.

20. I had to commence a hunger strike to get a wheelchair, the postage forms to write my mother, and a pair of pajamas.

21. I have been called vile names by Sergeants John Doe 1-3, C.O.s John Doe 1-5, and C.O. Jane Doe, such as "RAPO MOOK," "FUCKING QUEER", "Homo" and other Anti-gay slurs, and physically assaulted by several of them.

22. I have been clearly told that I am being denied the same privileges other inmates confined in Administrative Segregation - Pre hearing confinement receive, because I am gay, a sex offender, and because I write grievances.

23. Sergeants John Doe 1-3, C.O.s John Doe 1-5, and C.O. Jane Doe have each reiterated that because of my sexual orientation, my conviction, and my grievance writing history, I will continue to be treated differently from all other inmates in the same confinement status, and I have been.

24. I was also told by two Sergeants, John Doe 1 and 2, that if I write a grievance here I will be found dead, and I believe his threat is credible.

25. I wrote to Superintendent GRIFFIN three times, and he has not responded. He did direct COLLADO to investigate. COLLADO has done nothing to stop these civil rights violations of equal protection, retaliation, freedom of association, and cruel and inhuman treatment and excessive force.

26. With respect to the Misbehavior Report, I have been confined well past the 7 days in which NYSOCCS is required to begin a hearing. It was not until June 1, 2017, 19 days later, the hearing began.

27. At the hearing before DHO DOE, I made several objections as to the timeliness of the Misbehavior Report - written more than 24 hours after the alleged incident, - timeliness of the hearing, conflicting dates and times of the alleged incident, and lack of specific details. DHO Doe stopped the hearing, and now, 19 days later - 32 days being confined - the hearing is still not completed.

28. I also wrote to GRIFFIN about all of this, and the fact that Sergeant Howard, my employee assistant, did not do any of the specific things I asked him to do. To date, he permits his designee to continue in this pattern of due process violations.

29. Moreover, due to the timeliness of the Misbehavior Report writing, conflicting times and dates, and lack of specific details, I have been denied written notice required under department rules.

30. I have been denied a timely hearing and employee assistance under departmental rules, all in violation of due process.

31. From May 19, 2017 up until June 12, 2017, all employees, John Sgts John Doe 1-3, C.O.'s John Doe 1-5, C.O. Jane Doe, and Dr. BENTAVEGNA, and others not named, have refused to take a report as to the sexual assault I suffered at the hands of Franklin and other NYSDOCCS Staff, in clear violation of the PREA mandatory Reporting.

32. I wrote to EFFMAN, the person in charge of PREA Compliance, and to date he has failed to send an investigator.

33. I am confined in a wheelchair, and I have been told that because of that, GRIFFIN'S policy requires all SHU inmates in wheelchairs to be in the infirmary, and further his policy is that no infirmary SHU patient is entitled to Commissary, clothing, laundry, outdoor recreation.

34. So, I am being denied the very same programs and services all other SHU inmates are entitled to because I am confined in a wheelchair, in violation of the ADA/RA.

35. The NYSDOCCS has a long history and institutional culture of anti-gay bias, targeted against both inmates and other staff members.

36. ANNUNCI has no policy or program for sensitivity training, psychological evaluations or any way of limiting or preventing this biased homophobic treatment.

37. NYSDOCCS staff also has a long history and ingrained attitude of brutality against inmates who are convicted of sexually related offenses.

38. Instead of maintaining their roles of "Care, Custody, and Control," they have assumed the roles of "Judge, Jury and Executioner," meting out punishment of their own, not contemplated or authorized by Statute - or our State or Federal Constitutions.

39. Finally, the history of retaliation for the Exercise of utilizing the Administrative Remedy - the Grievance - is just as long.

40. To stop the assaults and harassment I was forced to go on a 10-day hunger strike, and suffered Kidney failure, resulting in a 5 day hospitalization.

41. I am only back 2 days, and the anti-gay harassment has again begun. I was already warned by C.O. John Doe #1 that more physical assaults were coming, and I fear for my safety.

V. CLAIMS FOR DAMAGES:

42. As a result of the above, I have suffered and continue to suffer Retaliation and Violation of Free Association in violation of the First Amendment; Equal Protection and Due Process violations of the Fourteenth Amendment; Cruel and Inhuman Treatment and excessive force in violation of the Eighth Amendment, as well as ADAJRA and PREA Violations.

43. As a result of the above I have also suffered violations of the NYS Constitutions Counterparts to the 1st, 8th and 14th Amendments. All as well as physical, verbal, and sexual abuse and harassment, emotional trauma all to Plaintiff's damage from May 18, 2017 to the date of filing this complaint.

II.

RELIEF REQUESTED:

WHEREFORE, plaintiff requests:

1. Money Judgment against all defendants for compensatory damages in the sum of \$5,000,000.00;
2. Declaratory Judgment, declaring the acts of the defendants violate the 1st, 8th, and 14th Amendments, PREA, and the ADA/RA;
3. Preliminary and permanent injunction requiring:
 - a. ANNUCCI to develop sensitivity training and psychological evaluations program for staff;
 - b. GRIFFIN and DHO DOE to dismiss the May 12, 2017 Misbehavior Report;
 - c. EFFMAN to commence a PREA investigation;
 - d. ANNUCCI to transfer plaintiff to a different Medium Security wheelchair facility other than Franklin;
 - e. GRIFFIN to release plaintiff from Administrative Segregation;
 - f. ENJOINING AND RESTRAINING Sergeants John Doe 1-3, C.O. JOHN DOE 1-5, and C.O. Jane Doe from further physical and verbal abuse;
 - g. ENJOINING GRIFFIN to provide plaintiff with 1 hour daily recreation, soap, shampoo, deodorant, toothpaste, towels, clean clothes, laundry service, postage stamps and 1 weekly telephone call to his 85 year old mother, and
4. For such other and further relief as to this court may seem just and proper, including costs, disbursements and interest.

VII.

DECLARATION

I declare the foregoing to be true and
correct to the best of my knowledge, under
penalty of perjury.

Executed on the 19th
day of June, 2017.

Respectfully submitted,

Daniel Miller

DANIEL MILLER, Dkt# 15A3706
Plaintiff, Pro Se
Greenhaven C.F.
P.O. Box 4000
Stormville, NY 12582

GREEN HAVEN CORRECTIONAL FACILITY
BOX 4000
ARMVILLE, NEW YORK 12582-4000

E: Daniel Miller DIN: 15A3706

GREEN HAVEN
CORRECTIONAL
FACILITY

NEOPOST

06/19/2017

US POSTAGE

FIRST-CLASS MAIL

\$000.88



ZIP 12582
041L11259010

USM P3
SDNY

Pro Se Office
Clerk of Court
U.S. District Court
Southern District of New York
Daniel Patrick Moynihan U.S. Courthouse
500 Pearl Street
New York, NY 10007

LEGAL MAIL

1000781330 0014

